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EXAMINER

LEYSON, JOSEPH S

ART UNIT

PAPER NUMBER

1722

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

09/840,156

Applicant(s)

CIMENTI, ANTONIO

Examiner

Joseph Leyson

Art Unit

1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-21 is/are pending in the application.
- 4a) Of the above claim(s) 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-15 and 17-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

1. Applicant's election with traverse of Group I, drawn to the apparatus in Paper No. 10 filed on 6 June 2003 is acknowledged. The traversal is on the ground(s) that the examination of both groups would not place any additional burden on the Examiner because a complete examination of the instant claims would require searching in both class 425, subclass 308, to which the apparatus of Group I has been assigned, and class 426, subclass 503, to which the method of Group II has been assigned. This is not found persuasive because the search and examination of both inventions would not be coextensive. The issues raised in the examination of apparatus claims are divergent from those raised in the examination of process claims. Further, while there may be some overlap in the searches of the two inventions, there is no reason to believe that the searches would be identical. Therefore, based on the additional work involved in searching and examining both distinct inventions together, restriction of the distinct inventions is clearly proper.

The requirement is still deemed proper and is therefore made FINAL.

2. Claim 16 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant

timely traversed the restriction (election) requirement in Paper No. 10 filed on 6 June 2003.

3. The replacement drawings were received on 6 June 2003. These drawings have been entered but are objected as mentioned below.

4. The drawings filed on 6 June 2003 fail to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: A (for the rotation arrow of shaft 13 in fig. 5). A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

5. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. Note that the instant specification discloses Fig. 1 to be a copy of an Italian patent. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

6. Claim 13 is objected to because of the following informalities: In claim 13, line 13, ".07" is a typo and should be changed to --0.7--. Appropriate correction is required.

Art Unit: 1722

7. The following is a quotation of the first paragraph of 35

U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 17-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The original specification does NOT disclose the machine including means for weighing the dough, as recited by instant claim 17, and thus such weighing means is new matter. The examiner suggests deleting "means for weighing the dough" from instant claim 17.

9. The following is a quotation of the second paragraph of 35

U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 12, 13 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to

particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The scope of claims 12 and 13 are unclear because claim 11, upon which each of claims 12 and 13 are dependent, recites that the dough portions, when using the second dough distributor, are heavier than 0.7 lb which conflicts with claims 12 and 13 each of which recites that such dough portions are in the range of 0.7-1.5 lb. Note that 0.7 lb is not heavier than 0.7 lb.

The scope of claim 18 is unclear because claim 17, upon which claim 18 is dependent, recites that the dough portions, when using the second means, are heavier than 0.7 lb which conflicts with claim 18 which recites that such dough portions are in the range of 0.7-1.5 lb. Note that 0.7 lb is not heavier than 0.7 lb.

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. Claims 11, 12, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP (0 532 991).

Note that this rejection applies to claims 17 and 18 if applicant deletes the new matter mentioned above, i.e. the weighing means, in claim 17.

EP (0 532 991) discloses a machine including means for feeding dough defined by a dough feeding hopper 1, means for extruding the dough defined by a dough extrusion apparatus including a screw feeder 2, first means for distributing the dough defined by a cone-shaped first dough distributor 3 and second means for distributing the dough defined by a cone-shaped second dough distributor 3 interchangeable with the first dough distributor 3 to change the size of the extrusion cross-section (col. 2, lines 1-10; col. 5, lines 32-38 and 42-53), means for controlling a dough dimension defined by a dough weight and dimension control apparatus 6, means for cutting the dough defined by a dough cutting apparatus 4, and means for controlling an extruded portion of the dough defined by an extruded dough portion control apparatus 5. The first dough distributor 3 is adapted to cooperate with the dough cutting apparatus 4 and the extruded dough portion control apparatus 5 to produce first dough portions with a first cross-sectional size. The second dough distributor 3, when interchanged with the first dough distributor 3, is adapted to cooperate with the dough cutting apparatus 4 and the extruded dough portion control

apparatus 5 to produce second dough portions with a second cross-sectional size. EP (0 532 991) does NOT disclose the first dough portions being in the range of 0.1 to 0.7 lb, or the second dough portions being heavier than 0.7 lb. However, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the machine of EP (0 532 991) such that the first dough portions are in the range of 0.1 to 0.7 lb and such that the second dough portions are heavier than 0.7 lb because EP (0 532 991: col. 2, lines 1-10; col. 5, lines 32-38 and 42-53) discloses that different sized distributors can be alternated to alternate various sizes of the dough portions depending upon the desired sizes thereof. Note that the instant specification, in the "DISCUSSION OF BACKGROUND" section, recites "A known machine ... includes a dough portions weight selection device comprised of an outlet cross section funnel adjustment", i.e., the dough portion weight can be selected by adjusting the outlet cross section.

13. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP (0 532 991) as applied to claims 11, 12, 17 and 18 above, and further in view of Hasten et al.(-894).

Hasten et al.(-894) discloses an extrusion apparatus 13 with a cone-shaped dough distributor (fig. 1), a dough worm support apparatus 90, 126, and a cutting apparatus 58, 62, the

cone-shaped dough distributor cooperating with the dough worm support apparatus 90, 126 which supports a dough worm until the cutting apparatus 58, 62 cuts the dough worm, thereby avoiding falling of the dough portion prior to cutting.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to further modify the machine with a dough worm support apparatus because such a modification would support a dough worm until a cutting apparatus cuts the dough worm, thereby avoiding falling of the dough portion prior to cutting, as disclosed by Hasten et al. (-894).

14. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP (0 532 991) in view of Tashiro et al. (-185).

EP (0 532 991) discloses a machine including means for feeding dough defined by a dough feeding hopper 1, means for extruding the dough defined by a dough extrusion apparatus including a screw feeder 2, first means for distributing the dough defined by a cone-shaped first dough distributor 3 and second means for distributing the dough defined by a cone-shaped second dough distributor 3 interchangeable with the first dough distributor 3 to change the size of the extrusion cross-section (col. 2, lines 1-10; col. 5, lines 32-38 and 42-53), means for

controlling a dough dimension defined by a dough weight and dimension control apparatus 6, means for cutting the dough defined by a dough cutting apparatus 4, and means for controlling an extruded portion of the dough defined by an extruded dough portion control apparatus 5. The first dough distributor 3 is adapted to cooperate with the dough cutting apparatus 4 and the extruded dough portion control apparatus 5 to produce first dough portions with a first cross-sectional size. The second dough distributor 3, when interchanged with the first dough distributor 3, is adapted to cooperate with the dough cutting apparatus 4 and the extruded dough portion control apparatus 5 to produce second dough portions with a second cross-sectional size. EP (0 532 991) does NOT disclose the first dough portions being in the range of 0.1 to 0.7 lb., or the second dough portions being heavier than 0.7 lb., or means for weighing the dough.

Tashiro et al.(-185) discloses means 10 for weighing the dough to measure the weight of cut pieces of dough.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the machine of EP (0 532 991) with the weighing means of Tashiro et al.(-185) because such a modification would enable the weight of a cut dough piece to be measured, and to further modify the

machine of EP (0 532 991) such that the first dough portions are in the range of 0.1 to 0.7 lb and such that the second dough portions are heavier than 0.7 lb because EP (0 532 991: col. 2, lines 1-10; col. 5, lines 32-38 and 42-53) discloses that different sized distributors can be alternated to alternate various sizes of the dough portions depending upon the desired sizes thereof. Note that the instant specification, in the "DISCUSSION OF BACKGROUND" section, recites "A known machine ... includes a dough portions weight selection device comprised of an outlet cross section funnel adjustment", i.e., the dough portion weight can be selected by adjusting the outlet cross section.

15. Claims 13 and 19-21 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112 and/or the objection(s), set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

16. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not teach or reasonably suggest the combination of elements defining the machine as recited by claim 13, particularly including the first dough distributor being adapted to render the machine compatible with the performance of the machine capable of producing dough portions substantially lighter than 0.7 lb, the

dough cutting apparatus being mounted at the one side of the longitudinal development of the machine, the second dough distributor being made in the form of the cone having the longitudinal axis which is substantially inclined toward the dough cutting apparatus with respect to the longitudinal development of the machine, the dough cutting apparatus having the length corresponding to the length of the cutting apparatus in the machine capable of producing dough portions substantially lighter than 0.7 lb, the dough cutting apparatus being adapted to cooperate with the first dough distributor to produce dough portions in the range of 0.1-0.7 lb. and to cooperate with the second dough distributor to produce dough portions in the range of 0.7-1.5 lb; or the combination of elements defining the machine as recited by claim 19, particularly including the first means for distributing the dough being adapted to render the machine compatible with the performance of the machine capable of producing dough portions substantially lighter than 0.7 lb, the means for cutting the dough being mounted at the one side of the longitudinal development of the machine, the second means for distributing the dough being made in the form of the cone having the longitudinal axis which is substantially inclined toward the means for cutting with respect to the longitudinal development of the machine, the means for cutting having the

length corresponding to the length of the cutter in the machine capable of producing dough portions substantially lighter than 0.7 lb, the means for cutting being adapted to cooperate with the first means for distributing the dough to produce dough portions within the range of 0.1-0.7 lb. and to cooperate with the second means for distributing the dough to produce dough portions heavier than 0.7 lb. Furthermore, the examiner agrees with applicant's remarks filed on 6 June 2003 that this structure has the advantage of permitting the use of a cutting blade having the same length for cutting both the small and the large dough portions, as also recited in the instant specification on page 7 paragraph (0027).

17. Applicant's arguments with respect to the instant claims have been considered but are moot in view of the new ground(s) of rejection.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Leyson whose telephone number is (703) 308-2647. The examiner can normally be reached on M-F(8:30-6:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on (703) 308-0457. The fax phone number for the

Application/Control Number: 09/840,156

Page 13

Art Unit: 1722

organization where this application or proceeding is assigned is
(703) 872-9306.

Any inquiry of a general nature or relating to the status
of this application or proceeding should be directed to the
receptionist whose telephone number is (703) 308-0661.

M

j1

7-20-03

James P. Mackey
JAMES P. MACKEY
PRIMARY EXAMINER

8/22/03